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VIRGINIA STATE CORPORATION COMMISSION.
RICHMOND, VA.

COMMONWEALTH OF VIRGINIA, at the relation of the STATE CORPORATION COMMISSION v. THE CHESAPEAKE AND OHIO RAILWAY COMPANY.*

August 3, 1905.

STATE CORPORATION COMMISSION—*Powers of—Board of Public Works—Acts 1879-1880, ch. 139, p. 118.*—The powers of the State Corporation Commission under the new constitution of 1902 and statutes in conformity therewith are broader than those granted to the Board of Public Works by Acts 1879-1880, ch. 139, p. 118.

ACTS 1879-1880, CH. 139, SEC. 2 CL. 15, P. 124, CONSTRUED — *Company Required to Build Bridge*—Under the fifteenth clause of section 2, Acts 1879-1880, ch. 139, p. 124, requiring the Richmond and Alleghany Railroad to "furnish to the people on the south side of the James River, for the transportation of persons and produce across James River to the line of their railroad, facilities the same, or at least equal to those now afforded by the James River and Kanawha Company," the duty rests upon the Chesapeake and Ohio Railway Company, as successor of the aforesaid Richmond and Alleghany Railroad, to furnish to the people on the south side of James River, who would naturally use Maidens Station, on the line of their railway, facilities the same or, at least, equal to those formerly afforded by the James River and Kanawha Company, and under all the circumstances of the case, this can only be done by the Chesapeake and Ohio Railway Company's erecting, at its own expense, a suitable and proper bridge, for passengers and vehicles, at a convenient point opposite to, and connecting with, Maidens Station.

The opinion states the case.

Braxton & Williams, for the complainants.

Henry Taylor, Jr., and *A. K. Leake*, for the defendant company.

HON. BEVERLY T. CRUMP, Chairman of the Commission.

On the 12th day of July, 1905, to which date the hearing of this matter had been continued from the return day of the notice herein, the parties appeared before the Commission.

The defendant railway company formally filed before the Commission its answer in this proceeding, entitled its "Motion, Demurrer and Answer" and moved the Commission to dismiss the petitions because they were not sworn to and because the amended and supplemental petition did not present a case for consideration by the Commission.

*Syllabus by C. B. Garnett.

Thereupon, by leave of the Commission, the amended and supplemental petition or memorial was amended in the presence of the Commission and, as amended, was sworn to.

Thereupon the Commission overruled the motion to dismiss this proceeding and the hearing was proceeded with.

Several witnesses were examined by both sides and all matters at issue having been argued before the Commission by counsel for the respective sides, the case was submitted to the Commission and the Commission not being then advised of its conclusions in the premises, time was taken to consider thereof.

The Commission, having given careful consideration to all the proceedings and evidence before it, is of opinion that it has full power and authority to order that proper facilities and public conveniences be afforded to the petitioning parties, if the facts of this case call for the facilities and conveniences asked for in this proceeding.

The Commission is of opinion that it is not confined, under the terms of the act of February 27th, 1879, referred to in the proceedings, to the functions therein conferred upon the former Board of Public Works.

The Commission is further of opinion that, under the fifteenth clause of section 2 of that act, as explained by all the facts before the Commission, the duty rests upon the Chesapeake & Ohio Railway Company of furnishing to the people on the south side of James River, who would naturally use Maidens Station, on the line of their railway, for the transportation of persons and produce across James River so as to reach Maidens Station, facilities the same or, at least, equal to those formerly afforded by the James River and Kanawha Company. Owing to the removal of the dam mentioned in the evidence and the consequent lowering of the water caused thereby, it does not now seem possible to furnish to persons on the south side of the river the same facilities to reach Maidens Station afforded to those persons for the transportation of persons and produce by the James River and Kanawha Company.

It seems to the Commission that a fair and reasonable interpretation of the statute requires the Chesapeake & Ohio Railway Company to furnish to the region on the south side of James River, naturally tributary to Maidens Station, proper and easy facilities

for crossing the river and reaching the station, proper and easy facilities for taking passage on the boats and for shipping produce having been formerly afforded by the James River and Kanawha Company.

It is to be observed that the duty upon the railroad company is to *furnish* facilities equal to those formerly *afforded* by the James River and Kanawha Company. The use of the word "furnish" in one instance and the word "afforded" in the other shows that it was expected that the railroad company would affirmatively give to the people on the south side of the river facilities equal to those they enjoyed by reason of the existence and operation of the James River and Kanawha Company, although that company did not own and operate its own boats. And, indeed, the use of those words as applied respectively to the railroad company and the canal company probably grew out of the fact that the canal company was not an operating but a toll company.

The difficulty in this case is to reach a conclusion as to what facilities will, at this time, be equal to the facilities formerly enjoyed at this point by persons on the south side of the river. It appears from the evidence that it is practically impossible to operate a boat across the river so as to make a facility of that character, in any sense, equal to the facilities formerly enjoyed by the persons on the south side of the river at this point. The Commission does not see how facilities in any sense equal to those formerly enjoyed by the people on the south side of the river at this point can be afforded except by the building of a bridge.

It appears from the evidence, that, before the destruction of the dam mentioned in the proceedings, the former operator of the road, the Richmond and Alleghany Railroad Company, ran a tram track from its station to the edge of the river on which produce was carried from the boat to the station.

The conclusion of the Commission is that the trade of the persons on the south side of the river has been greatly injured by the failure of the railway company to furnish the facilities contemplated in the act of 1879 and their former conditions can only be restored by the building of a bridge across the river opposite Maidens Station.

It is accordingly ordered that the Chesapeake & Ohio Railway Company proceed with practical dispatch to erect, at its own expense, a suitable and proper bridge, for passengers and vehicles, across James River at a convenient point opposite to, and connecting with, Maidens Station. And the Commission will enter such further orders in this proceeding as may be necessary and essential to the proper and reasonable carrying out of its determination herein.

VIRGINIA STATE CORPORATION COMMISSION.

RICHMOND, VA.

COMMONWEALTH OF VIRGINIA, at the relation of the STATE CORPORATION COMMISSION V. AMERICAN CAN COMPANY.*

July 15, 1905.

1. PUBLIC SERVICE CORPORATIONS—*Charter Fees Required of in Virginia.*—Secs. 37 and 38, *Tax Bill, Va. Code 1904*, p. 2214—The object of secs. 37 and 38 of the Tax Bill, Va. Code, 1904, p. 2214, is that public service corporations, coming into being, whether created under the laws of Virginia or by entering the state as a foreign corporation from another state, shall pay a larger charter fee than ordinary trading companies. And a foreign corporation authorized by its charter to act as an ordinary trading company, and in addition, to act as a public service corporation, must, when it obtains from the State Corporation Commission authority to do business in this state, pay the charter fee required of public service corporations, although sec. 163 of the Virginia Constitution of 1902, forbids foreign corporations to exercise in this state the functions of public service corporations.

2. CONSTITUTIONAL LAW—*Statutes—Corporation Commission*—A statute will not be declared unconstitutional unless it is plainly and clearly so and is not capable of any construction which would make it conform to the Constitution; and this rule is especially applicable to the State Corporation Commission, which has only to a limited extent the functions of a court.

3. CONSTITUTIONAL LAW—*Foreign Corporations*—*Sec. 37 of the Tax Bill, Va. Code 1904*, p. 2214—*Sec. 163, Cons. 1902*—It is not the object of sec. 37 of the Tax Bill, Va. Code 1904, p. 2214, fixing the fees required of corporations, to confer upon foreign corporations authority to exercise the functions and powers of public service corporations, and therefore that statute is not unconstitutional, as granting foreign corporations powers prohibited by sec. 163 of the Constitution of 1902.

* Syllabus by C. B. GARNETT.